SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 57 51

STELLA BARBER,

Petitioner,

vs.

B. GEORGE BARBER.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION.

J. CLIFFORD CURRY,
Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 857

STELLA BARBER,

Petitioner,

vs.

B. GEORGE BARBER.

REPLY BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE.

I.

Opinions in the Courts Below.

The original North Carolina litigation between these parties resulted in two opinions by the Supreme Court of North Carolina, both of which are styled Stella Barber v. B. George Barber. The first decision on September 27, 1939 is reported in 216 N. C. 232, 4 S. E. (2d) 447. The second opinion of that Court was rendered on April 10, 1940 and reported in 217 N. C. 422, 8 S. E. (2d) 204. Following the second decision, the case was remanded to the Superior Court of Buncombe County, North Carolina, where judgment for petitioner was entered.

These two decisions of the Supreme Court of North Carolina are not simply general statements of the general law of North Carolina, but represent the particular law of this particular case in North Carolina. Counsel for the parties had stipulated that the Court might treat these North Carolina decisions as duly proved as evidence of the North Carolina law (R. 10).

Based on that judgment, suit thereafter was filed in the Chancery Court of Hamilton County, Tennessee, and on June 26, 1941 a final decree was entered therein for petitioner (R. 13). On writ of error (R. 14) this Tennessee judgment was reversed and dismissed by the Supreme Court of Tennessee, (R. 22, 25) on November 20, 1943. The decision has not yet been published in the official Tennessee reports but is reported only in the Southwestern Reporter Advance Sheets of December 28, 1943 as 175 (S. W. (2d), 324 (R. 22).

II.

No Jurisdiction in This Court.

There is no federal question involved in this petition for certiorari, and this Court has no jurisdiction.

In each of the two prior appeals cited above, the Supreme Court of North Carolina has definitely stated that the judgment for separate maintenance without divorce, which was thereafter sued upon in Tennessee, was not a final judgment in North Carolina even as to past due installments, and that the consolidation of the amounts due, when ascertained in one order or decree, did not invest these orders with any other character than that which they originally had, i. e., that the order of allowance was subject to being modified or vacated at any time on the application of either party or any one interested. Instead of refusing to give full faith and credit to a

final decree, the Supreme Court of Tennessee has fully agreed with the Supreme Court of North Carolina that the judgment sued upon in Tennessee was not a final decree and, therefore, not entitled to the protection of the full faith and credit clause of the Constitution of the United States.

For the same reason the Tennessee decision is not violative of 28th U. S. C. A., Sec. 687.

There are no special or important reasons, as required by the rules of this Court, why this certiorari should be granted. The Tennessee Supreme Court has not decided a federal question of substance not heretofore decided by this Court, neither has it decided it in a way not in accord with applicable decisions of this Court. On the contrary, the decision is strictly in accord with the decision of this Court in *Sistaire* v. *Sistaire*, 218 U. S. 1.

III

Statement of the Matter Involved.

Petitioner's North Carolina judgment sued upon in Tennessee was obtained under the authority of Sec. 1667 of the Consolidated Statutes of North Carolina (see *Barber* v. *Barber*, 216 N. C., 232, 4 S. E. (2d) 447), which is a lengthy section providing for separate maintenance without divorce. This section (which is erroneously quoted on page 14 of petitioner's brief) among other things provides:

> "The order of allowance herein provided may be modified or vacated at any time on the application of either party or any one interested."

Petitioner had originally obtained this judgment for separate maintenance without divorce for herself and three minor children in 1920. Thereafter defendant moved to Fulton County, Georgia, where he obtained an absolute

divorce from petitioner by publication on or about April 1, 1929. The dissolution of the marriage relation ordinarily extinguishes the subject matter which forms the basis for an action for separate maintenance. The North Carolina courts were refusing to give full faith and credit to such decrees of divorce. An application for cancellation of the monthly allowance would have been of no avail despite the fact that the minor children were all adults by that time or had married. Defendant continued to pay regular installments each month until about August, 1932. In the meantime, he married another woman in 1932 and had moved to Chattanooga, Tennessee.

On August 9, 1932 the petitioner filed a suit in the Chancery Court of Hamilton County, Tennessee against defendant, seeking to recover alleged arrears of separate maintenance without divorce, but the case was dismissed because the monthly installments were not "final judgments."

Thereafter on March 7, 1939, in an effort to obtain a final judgment, petitioner filed a petition and motion in the original case in the Superior Court of Buncombe County, North Carolina, for a judgment for alimony arrearages. She alleged that the defendant had instituted a divorce suit against her in Fulton County, Georgia on publication, and had obtained a final decree on April 1, 1929, and prayed the Court to declare this divorce a nullity. She charged that the defendant was a non-resident of the State of North Carolina, and prayed for an order directing that notice be served upon him by the Sheriff of Hamilton County, Tennessee, which was done.

The defendant entered a special appearance in Buncombe County, North Carolina for the sole purpose of moving to dismiss the petition for lack of jurisdiction of his person as he had not been served with valid process in North Carolina. From an adverse decision in the Superior Court,

defendant appealed to the Supreme Court of North Carolina, which held on September 27, 1939 in *Stella Barber* v. *B. George Barber*, 216 N. C., 232, 4 S. E. (2d) 447, that the original service of process in 1920 vested the Court with jurisdiction of the person of the defendant, and that such jurisdiction was not thereafter lost by his becoming a non-resident. In dealing with the finality of such a decree for past due installments, the Court said:

> "Motion affecting the judgment but not the merits of the original controversy may be made in the cause. Federal Land Bank v. Davis, 215 N. C. 100, 1 S. E. 2d, 350. This is particularly true of judgments allowing alimony in divorce actions and in actions for alimony without divorce, in which it may not be said that the judgment is in all respects final. C. S. Supp. 1924, P. 1667."

The question for this Court to determine is whether the decree sued upon in Tennessee was so completely within the discretion of the North Carolina Court that it could annul or modify or vacate the decree, even as to overdue and unsatisfied installments of maintenance without divorce. The answer may be had by reading the case of *Stella Barber* v. *B. George Barber*, 217 N. C. 422, 8 S. E. (2d) 204.

This Court will remember that this second decision of the North Carolina Supreme Court was prior to this Court's decision on December 21, 1942 in the case of *Williams et al.* v. *State of North Carolina*, 317 U. S. 287, 87 L. Ed. 279, 63 Sup. Ct. Rep., 207. It had been a matter of public policy in North Carolina to refuse to recognize the validity of divorces obtained by publication in other jurisdictions from a defendant who continued to live in North Carolina. This Court held that the Nevada decrees of divorce were valid and that North Carolina was bound to give full faith and credit to such divorces obtained by publication, even though it contravened the public policy of North Carolina.

Defendant B. George Barber was precluded by the erroneous rulings of the North Carolina courts and the public policy of that state from making the defense in the North Carolina courts that his absolute divorce obtained in Georgia terminated the relationship of husband and wife and automatically ended his liability to pay separate maintenance without divorce to a woman no longer his wife.

The Supreme Court of North Carolina, however, plainly realized the injustice which was being done the defendant in requiring him to pay separate maintenance without divorce to a woman who was no longer his wife in all jurisdictions except North Carolina, especially where the youngest child provided in the original order in 1920 was now thirty years of age. That Court plainly went out of its way to point out to the defendant that he was entitled to a modification, (as distinguished from a cancellation) of the decree if he would only make application therefor. The Court quite evidently felt that since all of the children of the parties had long since become adults, he had a proper case for modification as to past due installments. The Court points this out in the following language in 217 N. C., 422, 8 S. E. (2d) 204:

> "The motion in the cause can be dealt with only as a petition for the ascertainment of the alimony due the plaintiff under former orders of the Court, looking toward enforcement against the defendant by appropriate proceedings. It is not a final judgment in the action, since both the plaintiff and the defendant may apply for other orders and for modifications of orders already made, which the court will allow as the ends of justice require, according to the changed conditions of the parties. The orders made from time to time are, of course, res judicata between the parties, subject to this power of the court to modify them. The consolidation of the amounts due, when ascertained in one order or decree does not invest any of these orders

with any other character than that which they originally had."

Following the decision in *Barber* v. *Barber*, 217 N. C., 422, 8 S. E. (2d), 204 on April 10, 1940, the case was remanded to the Superior Court of Buncombe County, North Carolina where the decree sued upon in this case was entered on the 13th day of June, 1940. This decree itself shows of its fact that it is simply a consolidation of the arrears of allowance due complainant, and that the essential character of the claim had not been changed. (Tr. 3) It does not purport to be a final judgment which cannot be modified, altered or vacated. It provides as follows:

> "This cause coming on to be heard * * * upon the petition of the plaintiff to ascertain the amount owed to the plaintiff by the defendant under the former orders of this Court in this cause and for judgment therefore, and the Court finding as a fact that the defendant is indebted to the plaintiff in the sum of Nineteen Thousand, Seven Hundred Seven and 20/100 ($19,707.20) Dollars under the former orders of this Court:
>
> "Now, therefore, it is ordered, adjudged and considered that plaintiff have and recover of the defendant the sum of Nineteen Thousand Seven Hundred Seven and 20/100 ($19,707.20) Dollars, together with the costs of this proceeding to be taxed by the Clerk, and that execution issue therefor. This the 13th day of June, 1940."

Following the erroneous decree of the Chancery Court of Hamilton County, Tennessee, (R. 13) the defendant took the case direct to the Supreme Court of Tennessee by writ of error. Two of the principal assignments of error in the Supreme Court of Tennessee (R. 20) were as follows:

> "The Chancellor erred in holding that the judgment sued upon in this cause was a final judgment when the

Supreme Court of North Carolina, in declaring the particular law of this particular case, had expressly held that the ascertainment of the monthly allowances due under former orders 'is not a final judgment in the action, since both the plaintiff and the defendant may apply for other orders and for modification of orders already made, which the court will allow as the ends of justice require, according to the changed conditions of the parties.'"

"The Chancellor erred in holding that the judgment sued upon in this cause was a final judgment because the court had simply added up the amount owed by petitioner under former orders of the same court in the same case for monthly allowance of separate maintenance without divorce, when the Supreme Court of North Carolina, in declaring the particular law of this particular case, had expressly stated that: 'The consolidation of the amounts due, when ascertained in one order or decree does not invest any of these orders with any other character than that which they original had.'"

In the Supreme Court of Tennessee the judgment was reversed and the case dismissed on November 20, 1943 (R. 23, 25). That Court properly held that the determinative question was whether the North Carolina judgment was a final judgment entitled to full faith and credit and concluded that, since the Supreme Court of North Carolina had held that it was not a final judgment, it agreed that the judgment was not final (R. 22, 24), saying:

"The foregoing language of the North Carolina Court seems to stamp the judgment sued on as belonging to that class held not to be final by the Supreme Court in Sistaire v. Sistaire, and therefore not entitled to the protection of the full faith and credit clause of the Constitution of the United States.

"Under the authority of Sistaire v. Sistaire, supra, therefore, and considering the nature of the judgment

herein sued on as defined by the Supreme Court of North Carolina, we must conclude that the Chancellor erred in his disposition of the matter."

IV.

Argument.

The Supreme Court of North Carolina has expressly held that the judgment sued upon in this case is not a final judgment in this action and that it can be modified or vacated at any time on the application of either petitioner or defendant, which modification or cancellation the Court will allow as the ends of justice require, according to the changed conditions of the parties. It further held that the consolidation of the amounts due, when ascertained in one order or decree, does not invest such order or decree with any other character than that which they originally had, to-wit: being subject to being modified or vacated.

This Court cannot assume that the Supreme Court of North Carolina was in utter ignorance of this Court's decision in *Sistaire* v. *Sistaire*, 218 U. S. 1, which long ago clarified the law on this subject. This Court, like the Supreme Court of Tennessee, should conclude that the Supreme Court of North Carolina meant exactly what it said as to the judgment not being final.

The Supreme Court of Tennessee quoted from *Barber* v. *Barber*, 217 N. C. 422 (R. 23) as follows:

> "It is not a final judgment in the action, since both the plaintiff and the defendant may apply for other orders and for modifications of orders already made, which the Court will allow as the ends of justice require, according to the changed conditions of the parties. The orders made from time to time are, of course, res judicata between the parties, subject to this power of the Court to modify them. The consolidation of the amounts due, when ascertained on one order or decree,

does not invest any of these orders with any other character than that which they originally had. If the defendant is in court only for reason of the original service of summons, he is in court only for such orders as, upon motion, are appropriate and customary in the proceeding thus instituted. There is no reason why a judgment should not be rendered on an allowance for alimony, which is a debt—and more than an ordinary (fol. 41) one. The Court below, in its sound discretion, which is not ordinarily reviewable by this Court, under the motion of plaintiff in this cause can hear the facts, change the conditions of the parties, the present needs of support of any of the children and, in its sound discretion, render judgment for what defendant owes under the former judgment and failed to pay and see to it that such judgment is given to protect plaintiff, and 'give diligence to make her (your) calling and election sure.'"

This Court long ago settled the question involved in this case. The Supreme Court of Tennessee (R. 22) on this point properly said:

> "In Sistaire v. Sistaire, 218 U. S., 1, 54 L. Ed., 904, the Supreme Court reviewed its former decisions respecting the nature of judgments for alimony and expressed itself thus:
>
> "First, that, generally speaking, where a decree is rendered for alimony and is made payable in future installments, the right to such installments becomes absolute and vested upon becoming due, and is therefore protected by the full faith and credit clause, provided no modification of the decree has been made prior to the maturity of the installments, since, as declared in the Barber Case, 'alimony decreed to a wife, in a divorce or separation from bed and board is as much a debt of record, until the decree has been recalled, as any other judgment for money is.' Second, that this general rule, however, does not obtain where, by the law of the state in which a judgment for future ali-

mony is rendered, the right to demand and receive such future alimony is discretionary with the court which rendered the decree, to such an extent that no absolute or vested right attaches to receive the installments ordered by the decree to be paid, even although no application to annul or modify the decree in respect to alimony has been made prior to the installments becoming due."

Instead of refusing to give full faith and credit to any final judgment, the Supreme Court of Tennessee simply agreed with the North Carolina Supreme Court; holding that the judgment sued upon in Tennessee was not a final judgment (R. 24), saying:

"The foregoing language of the North Carolina Court seems to stamp the judgment sued on as belonging to that class held not to be final by the Supreme Court in Sistaire v. Sistaire, and therefore not entitled to the protection of the full faith and credit clause of the Constitution of the United States.

"Under the authority of Sistaire v. Sistaire, supra, therefore, and considering the nature of the judgment herein sued on as defined by the Supreme Court of North Carolina, we must conclude that the Chancellor erred in his disposition of the matter."

No additional citations are necessary on this question although there is an abundance of decisions of both federal and state courts, all based upon the authority of *Sistaire v. Sistaire*.

Prior to the decision in *Williams et al*, v. *State of North Carolina*, 317 U. S., 287, 87 L. Ed., 279, 63 Sup. Ct. Rep., 207, the defendant might have landed in prison for bigamous cohabitation or bigamy if he had dared venture into North Carolina to seek a modification of the decree in this case. In any event, he could have been jailed for contempt of court for failing to pay separate maintenance without

divorce to a woman no longer his wife and to minor children who had long ago become adults. The North Carolina courts would have refused to recognize his Georgia divorce until compelled to do so by this Court's recent opinion in *Williams et al.* v. *State of North Carolina*, which decision the defendant could not have anticipated.

Under the authority of *Williams et al.* v. *State of North Carolina, supra*, the courts of North Carolina would probably, on proper application therefor, cancel and vacate petitioner's judgment obtained in the Superior Court of Buncombe County, North Carolina, against defendant on June 13, 1940, which is made the basis of the decree in the present case. Such delayed justice to the defendant would be no protection to him, however, were this Court to grant certiorari and reverse the decision of the Supreme Court of Tennessee.

It is respectfully submitted that the petition for certiorari should be denied.

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SUPREME COURT OF THE UNITED STATES.

No. 51.—October Term, 1944.

Stella Barber, Petitioner,
vs.
B. George Barber.

On Writ of Certiorari to the Supreme Court of the State of Tennessee.

[December 4, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The question for decision is whether the Supreme Court of Tennessee, in a suit brought upon a North Carolina judgment for arrears of alimony, rightly denied full faith and credit to the judgment, on the ground that it lacks finality because, by the law of North Carolina, it is subject to modification or recall by the court which entered it.

In 1920 petitioner secured in the Superior Court of North Carolina for Buncombe County, a court of general jurisdiction, a judgment of separation from respondent, her husband. The judgment directed payment to petitioner of $200 per month alimony, later reduced to $160 per month. In 1932 respondent stopped paying the prescribed alimony. In 1940, on petitioner's motion in the separation suit for a judgment for the amount of the alimony accrued and unpaid under the earlier order, the Superior Court of North Carolina gave judgment in her favor. It adjudged that respondent was indebted to petitioner in the sum of $19,707.20, under its former order, that petitioner have and recover of respondent that amount, and "that execution issue therefor".

Petitioner then brought the present suit in the Tennessee Chancery Court to recover on the judgment thus obtained. Respondent, by his answer, put in issue the finality, under North Carolina law, of the judgment sued upon, and the cause was submitted for decision on the pleadings and a stipulation that the court might consider as duly proved the records in two prior appeals in the North Carolina separation proceeding "upon the authority of which the judgment sued upon in the present case is predicated", and that the opinions of the Supreme Court of North Carolina upon these appeals, *Barber* v. *Barber*, 216 N. C. 232, 217 N. C. 122, should be "admissible in evidence to prove or tend to prove the North Carolina law".

The Tennessee Chancery Court held the judgment sued upon to be entitled to full faith and credit, and gave judgment for petitioner accordingly. The Supreme Court of Tennessee reversed, on the ground that the judgment was without the finality entitling it to credit under the full faith and credit clause of the Constitution, Art. IV, § 1. 180 Tenn. 353, 175 S. W. 2d 324. We granted certiorari because of an asserted conflict with *Sistare* v. *Sistare*, 218 U. S. 1, and because of the importance of the issue raised. 322 U. S. 719.

The constitutional command is that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Article IV, § 1 of the Constitution also provides that "Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." And Congress has enacted that judgments "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken". Act of May 26, 1790, c. 11, 1 Stat. 122, as amended, 28 U. S. C. § 687.

In *Sistare* v. *Sistare*, *supra*, 16-17, this Court considered whether a decree for future alimony, brought to a sister state, was entitled to full faith and credit as to installments which had accrued, but which had not been reduced to a further judgment. The Court held that a decree for future alimony is, under the Constitution and the statute, entitled to credit as to past due installments, if the right to them is "absolute and vested," even though the decree might be modified prospectively by future orders of the court. See also *Barber* v. *Barber*, 21 How. 582. The *Sistare* case also decided that such a decree was not final, and therefore not entitled to credit, if the past due installments were subject retroactively to modification or recall by the court after their accrual. See also *Lynde* v. *Lynde*, 181 U. S. 183, 187.

The *Sistare* case considered the applicability of the full faith and credit clause, only as to decrees for future alimony some of the installments of which had accrued. The present suit was not brought upon a decree of that nature, but upon a money judgment for alimony already due and owing to the petitioner, as to which execution was ordered to issue. The Supreme Court of Tennessee applied to this money judgment the distinction taken in the *Sistare* case as to decrees for future alimony. It concluded that by the

law of North Carolina the judgment for the specific amount of alimony already accrued, was subject to modification by the court which awarded it, that it was not a final judgment under the rule of the *Sistare* case, and therefore was not entitled to full faith and credit.

As we are of opinion that the Tennessee Supreme Court erroneously construed the law of North Carolina as to the finality of the judgment sued upon here, it is unnecessary to consider whether the rule of the *Sistare* case as to decrees for future alimony is also applicable to judgments subsequently entered for arrears of alimony. Compare *Lynde* v. *Lynde*, *supra*, 187, where this Court distinguished between a decree for arrears of alimony and one for future alimony, some of the installments of which had accrued. See also *Audubon* v. *Shufeldt*, 181 U. S. 575, 577-578. For the same reason, it is unnecessary to consider whether a decree or judgment for alimony already accrued, which is subject to modification or recall in the forum which granted it, but is not yet so modified, is entitled to full faith and credit until such time as it is modified. Cf. *Levine* v. *Levine*, 95 Ore. 94, 109-113; *Hunt* v. *Monroe*, 32 Utah 428, 440; and compare *Milwaukee County* v. *White Co.*, 296 U. S. 268, 275-276, and cases cited.

We assume for present purposes that petitioner's judgment for accrued alimony is not entitled to full faith and credit, if by the law of North Carolina it is subject to modification. The refusal of the Tennessee Supreme Court to give credit to that judgment because of its nature is a ruling upon a federal right, and the sufficiency of the grounds of denial are for this Court to decide. *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 443, and cases cited. And in determining the applicable law of North Carolina, this Court reexamines the issue with deference to the opinion of the Tennessee court, although we cannot accept its view of the law of North Carolina as conclusive. This is not a case where a question of local law is peculiarly within the cognizance of the local courts in which the case arose. The determination of North Carolina law can be made by this Court as readily as by the Tennessee courts, and since a federal right is asserted, it is the duty of this Court, upon an independent investigation, to determine for itself the law of North Carolina. See *Adam* v. *Saenger*, 303 U. S. 59, 64, and cases cited.

We are thus brought to the question whether, by the law of North Carolina, the judgment which petitioner has secured in that

state for arrears of alimony is so wanting in finality as not to be within the command of the Constitution and the Act of Congress. Our examination of the North Carolina law on this subject must be in the light of the admonition of *Sistare* v. *Sistare*, *supra*, 22, that "every reasonable implication must be resorted to against the existence of" a power to modify or revoke installments of alimony already accrued "in the absence of clear language manifesting an intention to confer it." The admonition is none the less to be heeded when the debt has been reduced to a judgment upon which execution has been directed to issue.

Section 1667 of the North Carolina Consolidated Statutes (General Stats. of 1943, Michie, § 50-16), under which petitioner brought her suit for separation and alimony, provides that "If any husband shall separate himself from his wife and fail to provide her and the children of the marriage with . . . necessary subsistence", she may maintain an action in the Superior Court to have a "reasonable subsistence" allotted and paid to her. It declares that "the order of allowance . . . may be modified or vacated at any time, on the application of either party or of any one interested." This statute by its terms makes provision only for the modification of the "order of allowance", not of a judgment rendered for the amount of the unpaid allowances which have accrued under such an order. Nor does it state that the order of allowance may be modified retroactively as to allowances already accrued. The original North Carolina judgment ordering the payment of subsistence installments of alimony is not in the record, and we are not advised of its terms. Respondent places his reliance not on them, but upon the North Carolina law, apart from the terms of the decree, as providing for modification of such a judgment. But we are aware of no statute or decision of any court of North Carolina and none has been cited, to the effect that an unconditional judgment of that state for accrued allowances of alimony may be modified or recalled after its rendition. Indeed, we find no pronouncement of any North Carolina court that before such a judgment is rendered, an order for future allowances may be modified or set aside with respect to allowances which have accrued and are due and owing.

The Supreme Court of Tennessee found no support in North Carolina statutes or judicial decisions for its conclusion that the North Carolina judgment for arrears of alimony is subject to such modification, other than a single paragraph of the opinion

of the Supreme Court of North Carolina at an early stage of the suit which resulted in the judgment upon which suit was here brought.[1] But these remarks, as their context shows, appear to be addressed, not to the power of the court to modify or set aside a judgment for arrears of alimony, but to the authority conferred by N. C. Con. Stat. §1667 ~~authorizing~~ the court in the suit for alimony to modify its previous order for the allowance of subsistence.

Consistently with *Sistare* v. *Sistare*, *supra*, the passage points out that such an order is not final in the proceeding in which it is entered, but is subject to modification by further orders of the court. In this respect the North Carolina court was but following its own pronouncement in the first appeal in the separation proceeding, *Barber* v. *Barber*, *supra*, 216 N. C. 232, 234, and in numerous other decisions of that court. See *Crews* v. *Crews*, 175 N. C. 168, 173; *Anderson* v. *Anderson*, 183 N. C. 139, 142; *Tiedemann* v. *Tiedemann*, 204 N. C. 682, 683; *Wright* v. *Wright*, 216 N. C. 693, 696. But it is quite another matter to say that past due installments may be modified, or that a judgment, not by its terms conditional and on which execution may issue, is subject to modification because the obligation for accrued alimony could have been modified or set aside before its merger in the judgment. And in fact the North Carolina Supreme Court has been at pains to indicate that such is not the case.

In considering whether the decree of another state for future alimony is entitled to full faith and credit, the North Carolina

[1] The language quoted from Barber v. Barber, 217 N. C. 422, 427-28, is as follows:

"It is not a final judgment in the action, since both the plaintiff and the defendant may apply for other orders and for modifications of orders already made, which the court will allow as the ends of justice require, according to the changed conditions of the parties. The orders made from time to time are, of course, *res judicata* between the parties, subject to this power of the court to modify them. The consolidation of the amounts due, when ascertained in one order or decree, does not invest any of these orders with any other character than that which they originally had. If the defendant is in court only by reason of the original service of summons, he is in court only for such orders as, upon motion, are appropriate and customary in the proceeding thus instituted. There is no reason why a judgment should not be rendered on an allowance for alimony, which is a debt—and more than an ordinary one. The court below, in its sound discretion, which is not ordinarily reviewable by this Court, under the motion of plaintiff in this cause can hear the facts, change of conditions of the parties, the present needs of support of any of the children and, in its sound discretion, render judgment for what defendant owes under the former judgment, and failed to pay and see to it that such judgment is given to protect plaintiff, and give diligence to make her (your) calling and election sure."

court recognizes that such faith and credit is required as to past due installments when it does not appear that they may be modified or revoked. And it interprets general provisions for modification of a decree directing future allowances of alimony as inapplicable to allowances which have become due and owing. Since its decision in *Barber* v. *Barber*, in the 217th N. C., it has held in *Lockman v. Lockman*, 220 N. C. 95, that such a decree in Florida is entitled to credit in North Carolina with respect to arrears in alimony. The court said, at page 103:

"The rule in North Carolina is that a judgment awarding alimony is a judgment directing the payment of money by the defendant, and by such judgment the defendant becomes indebted to the plaintiff for such alimony as it falls due and when the defendant is in arrears in the payment of alimony, the Court may judicially determine the amount due and enter decree accordingly. It has no less dignity than any other contractual obligation. Barber v. Barber, 217 N. C. 422, 8 S. E. (2d) 204. In Duss v. Duss, 92 Fla. 1081, the obligation of the divorced husband to pay alimony was stated in language of similar import."

The Supreme Court of North Carolina thus has assimilated the law of North Carolina to that of Florida, under which it had just held that past due installments of alimony were not subject to modification. In this state of the law of North Carolina, we cannot say that past due installments under a decree for future alimony can be revoked or modified.

Still less can we say that a judgment for such installments can be so modified. The North Carolina Supreme Court said in the *Barber case*, 217 N. C. 422, 428: "There is no reason why a judgment should not be rendered on an allowance for alimony, which is a debt—and more than an ordinary one". And elsewhere in its opinion it said (page 427):

"A judgment awarding alimony is a judgment directing the payment of money by a defendant to plaintiff and, by such judgment, the defendant thereupon becomes indebted to the plaintiff for such alimony as it becomes due, and when the defendant is in arrears in the payment of alimony the court may, on application of plaintiff, judicially determine the amount then due and enter its decree accordingly. The defendant, being a party to the action and having been given due notice of the motion, is bound by such decree, and the plaintiff is entitled to all the remedies provided by law for the enforcement thereof."

We do not find in the language on which the Tennessee court relied any clear or unequivocal indication that the judgment for arrears of alimony, on which execution was directed to issue, was

itself subject to modification or recall. True, as the opinion of the North Carolina court states, the judgment for arrears of alimony was not a final judgment in the separation suit. As to future alimony payments not merged in the money judgment, the allotments ordered are, by the terms of the statute, subject to modification. But it would hardly be consistent with the court's statements, that accrued alimony is a debt for which a judgment may be rendered, that the defendant is bound by the judgment, and that "the plaintiff is entitled to all the remedies provided by law" for its enforcement, to say that the judgment may be modified or set aside by virtue of a statute which in terms merely authorizes modification of the order for payment of allowances.

The judgment of a court of general jurisdiction of a sister state duly authenticated is prima facie evidence of the jurisdiction of the court to render it and of the right which it purports to adjudicate. *Adam* v. *Saenger*, *supra*, 62, and cases cited. The present judgment is on its face an unconditional adjudication of petitioner's right to recover a sum of money due and owing which, by the law of the state, is a debt. The judgment orders that execution issue. To overcome the prima facie effect of the judgment record, it is necessary that there be some persuasive indication that North Carolina law subjects the judgment to the infirmity of modification or recall which is wanting here.

Upon full consideration of the law of North Carolina we conclude that respondent has not overcome the prima facie validity and finality of the judgment sued upon. We cannot say that the statutory authority to modify or recall an order providing for future allowances of installments of alimony extends to a judgment for overdue installments or that such a judgment is not entitled to full faith and credit.

Reversed.

Mr. Justice JACKSON, concurring.

I concur in the result, but I think that the judgment of the North Carolina court was entitled to faith and credit in Tennessee even if it was not a final one. On this assumption I do not find it necessary or relevant to examine North Carolina law as to whether

its judgment might under some hypothetical circumstan
modified.

Neither the full faith and credit clause of the Constitutio
the Act of Congress implementing it says anything about
judgments or, for that matter, about any judgments. Both re
that full faith and credit be given to "judicial proceed
without limitation as to finality. Upon recognition of the
meaning of that term much may some day depend.

Whatever else this North Carolina document might be, n
denies that it is a step in a judicial proceeding, instituted va
under the strictest standards of due process. On its face it is
and by its terms it awards a money judgment in a liqui
amount, presently collectible, and provides "that execution
therefor." Tennessee should have rendered substantially the
judgment that it received from the courts of North Carolina
later a decree is made in North Carolina which modifies or am
its judgment, that modification or amendment will also be ent
to faith and credit in Tennessee.

Of course a judgment is entitled to faith and credit for
what it is, and no more. But its own terms constitute a d
mination by the rendering court as to what it is, and an enfor
court may not search the laws of the state to see whether
judgment terms are erroneous. Of course, if a judgment by
terms reserves power to modify or states conditions, a judgm
entered upon it could appropriately make like reservations or
ditions. No such appear in this judgment unless they are t
annexed to it by a study of the law of North Carolina. Any
plication for such relief should be addressed to the North C
lina court and not to the Tennessee court nor to this one.
purpose of the full faith and credit clause is to strengthen the
of the state court and to eliminate state lines as a shelter f
judicial proceedings. This is defeated by entertaining a pe
review the support in state law for the judgment as it has b
rendered, which is a delaying inquiry as has been shown by
case.